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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

Public Copy

File: [redacted] Office: VERMONT SERVICE CENTER Date:

MAR 16 2001

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for Alien Fiance(e) Pursuant to Section 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(K)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Myra L. Rosenberg

for Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of the Philippines, as the fiance(e) of a United States citizen pursuant to section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(K).

The director denied the petition after determining that the petitioner and the beneficiary had not previously met in person, as required by section 214(d) of the Act. In reaching this conclusion, the director found that the petitioner's failure to comply with the statutory requirement was not the result of extreme hardship to the petitioner, or unique circumstances. The petitioner had claimed that he was unable to take a vacation to visit the beneficiary because he was not entitled to any vacation time from his job as a carpenter's assistant.

Section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(K), defines "fiance(e)" as:

> An alien who is the fiancee or fiance of a citizen of the United States and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after entry....

Section 214(d) of the Act, 8 U.S.C. 1184(d) states in pertinent part that a fiancee petition:

> shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within two years before the date of filing the petition, have a bonafide intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival...

The Petition for Alien Fiance(e) (Form I-129F) was filed with the Service on August 7, 2000. Therefore, the petitioner and the beneficiary were required to have met during the period that began on August 7, 1998 and ended on August 7, 2000.

On the Form I-129F, the petitioner specified that he and beneficiary had never met and such a meeting would cause extreme hardship to him. The petitioner, however, did not specify what constituted the extreme hardship, so the director requested that the petitioner submit additional information. In response to this request, the petitioner claimed that "...I will lose my job as I do

not get any vacation days and without a job I could not support even myself, so this would create extreme hardship to me." The director found that the petitioner's reason for not meeting the beneficiary was not extreme hardship, and he denied the petition.

On appeal, the petitioner claims that the Philippines is not safe due to rioting and a "mini civil war." He is requesting that the civil unrest in the Philippines be considered as extreme hardship to him.

Pursuant to 8 C.F.R. 214.2(k)(2), a district director may exercise discretion and waive the requirement of a personal meeting between the petitioner and beneficiary if it is established that compliance would:

(1) Result in extreme hardship to the petitioner; or

(2) Violate strict and long-established customs of the beneficiary's foreign culture or social practice.

The petitioner's reasons for not meeting the beneficiary do not fall within one of the exceptions cited in §214.2(k)(2).

The United States Department of State publishes travel warnings and public information sheets for U.S. citizens through the Consular Affairs internet web site at http://travel.state.gov. Travel Warnings are issued when the State Department decides, based on all relevant information, to recommend that Americans avoid travel to a certain country. Public Announcements are a means to disseminate information about terrorist threats and other relatively short-term and/or trans-national conditions posing significant risks to the security of American travelers.

The Department of State currently has a public announcement for the Philippines; however, this announcement was not in effect during the two-year period prior to the filing of the petition or at the time the appeal was filed. The Department of State did not post the public announcement until January 2001, and prior to this time, the Department of State noted that "most of the country is hospitable to travel." On appeal, the petitioner stated that civil unrest prevented him from visiting the beneficiary; yet, the petitioner did not provide any documentary evidence about country conditions from reputable media outlets or international organizations to support his claim that the Philippines was facing civil unrest during the period of time in question (August 7, 1998 - August 7, 2000). The Department of State's public announcement about travel to the Philippines cannot be considered on appeal, as it pertains to country conditions subsequent to the filing of the petition.

It is noted that the public announcement is merely a warning from the Department of State about the risk of travel to the Philippines

at the present time. The language in the statue does not require the petitioner to visit the beneficiary in the beneficiary's country of residence. The statute only requires an in-person meeting between the petitioner and the beneficiary, which can take place in any country. There is no evidence in the record that the petitioner and the beneficiary have attempted to meet in a third country, if the petitioner's travel to the Philippines or the beneficiary's travel to the U.S. is problematic.

The petitioner has failed to establish that he and the beneficiary have personally met as required by section 214(d) of the Act, and that extreme hardship or unique circumstances qualify him for a waiver of the statutory requirement. Pursuant to 8 C.F.R 214.2(k)(2), the denial of this petition is without prejudice, and the petitioner may file a new I-129F petition after he and the beneficiary have met in person.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.